

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
5:98cr246-2

**THIS MATTER** is before the Court on Defendant's Notice of Appeal (Document #120), filed March 15, 2010\* and docketed March 24, 2010. Defendant seeks to appeal this Court's Order of February 19, 2010 (Document #118) denying Defendant's motion for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) and Am. 706. However, Defendant has filed his Notice more than ten days after the entry of the order he is attempting to appeal.

Rule 4(b)(1)(A) requires that a defendant in a criminal case file a notice of appeal in the district court “within 10 days after the later of: (i) the entry of either the judgment or the order being appealed; or (ii) the filing of the government’s notice of appeal.” FED. R. APP. P. 4(b)(1)(A). However, Rule 4(b)(4) permits the Court “[u]pon a finding of excusable neglect or good cause . . . – before or after the time has expired, with or without motion and notice – [to] extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).” Other than as provided in this rule, the Court may not extend the time for filing a notice of appeal. *See United States v. Reyes*, 759 F.2d 351, 353 (4<sup>th</sup> Cir. 1985); *United*

\*This is the handwritten date on the Notice. However, the Notice of Appeal was not postmarked until one week later, on March 22, 2010. Whether the Notice was actually filed on the earlier date, the later date, or somewhere in between is irrelevant to the Court's analysis, since any date within this range would fall within the 30 day excusable neglect period.

States v. Schuchardt, 685 F.2d 901, 902 (4<sup>th</sup> Cir. 1982).

In the present case, Defendant filed his Notice of Appeal within the thirty-day excusable neglect window established by Rule 4(b)(4). Although Defendant gives no specific reason for his untimeliness, the Court is aware that delays in notifying prisoners of decisions on § 3582(c) motions are typical. Because Defendant nevertheless filed his Notice of Appeal within the period of excusable neglect, the court finds that good cause exists for granting an extension of time pursuant to FED. R. APP. P. 4(b)(4).

**IT IS, THEREFORE, ORDERED** that Defendant's Notice of Appeal is deemed timely filed.

Signed: April 1, 2010



Richard L. Voorhees  
United States District Judge

